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The present rule of computing the exchange at the date of breach seems a correct solution of this long disputed point.

HOW FAR MAY LEGISLATURES REGULATE JUDICIAL PROCEDURE. — Judicial reformers who advocate the regulation of judicial procedure and practice by the courts rather than by the legislatures<sup>1</sup> have found a staunch ally in the Supreme Court of Indiana. The rules of that court required the briefs of counsel to contain concise statements of the errors and exceptions relied upon. The State Legislature enacted a provision which abrogated this rule.<sup>2</sup> The court held that act unconstitutional.<sup>3</sup>

A legislature has great latitude in determining the rules of procedure of those courts that owe their existence directly to the legislature.<sup>4</sup> It is not logical to conclude therefrom that a legislature has such wide power over a court that owes its being to that instrument responsible for the legislature itself.<sup>5</sup> Federal and state constitutions generally establish courts with jurisdiction in law and equity. The scope of that jurisdiction over judicial procedure must be determined in the light of the common law and the history of the courts anterior to and at the time of the adoption of the constitution.<sup>6</sup> History reveals that, at least as far back as the days of Richard II, rules of procedure had been adopted by the judges.<sup>7</sup> But the judges did not exclusively control their procedure, for we find Parliament<sup>8</sup> also regulating the procedure of the courts. This system of dual control over procedure existed when our Constitution adopted the theory of the separation of powers.<sup>9</sup> Indeed the Supreme Court of the United States<sup>10</sup> has recently recognized the inherent right of the courts to regulate judicial procedure, at least in the absence of contrary legislation. Yet neither the federal nor the state constitutions expressly provided for a mode of adjudicating the conflict that might ensue between the two departments on a question of judicial procedure.

<sup>1</sup> See Roscoe Pound, "Regulation of Judicial Procedure by Rules of Court," 10 ILL. L. REV. 163; Elihu Root, Address in the REPORT OF NEW YORK STATE BAR ASSOCIATION, xxxiv, 87.

<sup>2</sup> See 1917 IND. ACTS, c. 143, § 3. See IND. CONSTITUTION, Art. III, § 1, and Art. VII, § 1.

<sup>3</sup> Epstein v. State, 128 N. E. 353 (1920). See RECENT CASES, p. 434, *infra*.

<sup>4</sup> See UNITED STATES CONSTITUTION, Art. III, § 1. "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." See also PA. CONSTITUTION, Art. V, § 1; Wilbur Larremore, "Regulation of Contempt of Court," 13 HARV. L. REV. 615, 619; WILLOUGHBY, CONSTITUTIONAL LAW OF THE UNITED STATES, 1270.

<sup>5</sup> See WIS. CONSTITUTION, Art. VII, § 2. See ILL. CONSTITUTION, Art. III, "The powers of the government of this State are divided into three distinct departments, — legislative, executive, and judicial; and no person or collection of persons, being one of these Departments, shall exercise any power properly belonging to either one of the others."

<sup>6</sup> See State v. Harmon, 31 Oh. St. 250, 258 (1877).

<sup>7</sup> See TIDD'S PRACTICE, 8 ed., xxxvii-l; Preface to TIDD'S PRACTICE, 3 ed., ix, x. See also Pound, *supra*, 171.

<sup>8</sup> See TIDD'S PRACTICE, 8 ed., xxiii-xxxvi.

<sup>9</sup> See Roscoe Pound, Address in the OHIO STATE BAR ASSOCIATION, xxxvi, 34.

<sup>10</sup> See *In re Peterson*, U. S. Sup. Ct., October Term, 1919, No. 28.

Fortunately, these conflicts in general were infrequent because of the deference of the courts. But an early revolt against this legislative control came in California.<sup>11</sup> The legislature required the courts to give their decisions "in writing with the reasons therefor." Justice Field said,<sup>12</sup> "If the Legislature can require the reasons of our decisions in writing, it can prescribe the paper upon which they shall be written and the ink which shall be used. And yet no sane man will justify any such absurd pretension, but where is the limit to the power if its exercise in any particular be admitted?" Encouraged by this decision, a court<sup>13</sup> refused to comply with a legislative enactment requiring the judges to write head notes to their opinions.

A noteworthy dispute soon arose on the question of determining the qualifications for admission to the bar. Some state legislatures assumed to themselves the right to determine that matter. Whereupon the courts<sup>14</sup> emphatically pronounced such legislation to be an undisguised invasion of judicial power and refused to admit those men to practice who failed to comply with the court's requirements for admission. Attorneys are officers of the court.<sup>15</sup> Who shall be an officer of the court is an essentially judicial question precisely as the selection of the Speaker of the House is a legislative matter.<sup>16</sup> Deprive the court of the power to determine admission and you deprive it of the power to determine grounds for disbarment. The latter power has always inhered in the courts.<sup>17</sup>

Similarly the judiciary<sup>18</sup> has resisted legislation abridging the court's power to enforce its decrees through contempt process. The constitutional creation of a court calls into being the inherent power of the court to effectuate its own acts by contempt process.<sup>19</sup> It is indispensable to protect the court and the administration of justice. Courts are not to be relegated to "puppetdom."

It is apparent from these cases that, in our system of dual control over procedure, judicial regulation is not coextensive with legislative regulation. Any other result would be at variance with the genius of our

<sup>11</sup> *Houston v. Williams*, 13 Cal. 24 (1859). See *Vaughn v. Harp*, 49 Ark. 160, 4 S. W. 751 (1886).

<sup>12</sup> See *Houston v. Williams*, *supra*, 25.

<sup>13</sup> *Ex parte Griffiths*, 118 Ind. 83, 20 N. E. 513 (1880).

<sup>14</sup> *In re Shorter*, No. 12, 811 Fed. Cas. (1865); *In re Mosness*, 39 Wis. 509 (1876); *Petition of Splane*, 123 Pa. St. 527, 16 Atl. 481 (1889); *In re Day*, 181 Ill. 73, 54 N. E. 646 (1899). See also *ex parte Secombe*, 19 How. (U. S.) 9, 13 (1856).

<sup>15</sup> See *ex parte Garland*, 4 Wall. (U. S.) 333, 378 (1866). See WEEKS, ATTORNEYS AT LAW, 140, 142.

<sup>16</sup> *State v. Noble*, 118 Ind. 350, 21 N. E. 244 (1880). Of course a constitution may grant the executive the power to appoint federal officials. See UNITED STATES CONSTITUTION, Art. II, Sec. 2, § 2.

<sup>17</sup> *Penobscot County Bar v. Kimball*, 64 Me. 140 (1875). See WEEKS, ATTORNEYS AT LAW, 140.

<sup>18</sup> *Little v. State*, 90 Ind. 338 (1883); *Hale v. State*, 55 Oh. St. 210, 45 N. E. 199 (1896); *Carter v. Virginia*, 96 Va. 791, 32 S. E. 780 (1890); *Chic. B. & Q. Ry. Co. v. Gildersleeve*, 219 Mo. 170, 118 S. W. 86 (1908); *State v. Morrill*, 16 Ark. 384 (1855) (allowed slight regulation). See also *ex parte Robinson*, 19 Wall. (U. S.) 505, 510 (1873). *In re Shortridge*, 99 Cal. 526, 34 Pac. 227 (1893). See 2 CAMPBELL'S LIVES OF CHIEF JUSTICES, 297; THOMPSON, TRIALS, 2 ed., § 125; Wilbur Larremore, *supra*.

<sup>19</sup> Cf. *M'Culloch v. Maryland*, 4 Wheat. (U. S.) 316 (1819). See SMITH, ACTIONS AT LAW, 10 ed., 21.

constitutions and the separation of powers. To say, as Justice Field implies, that the legislative regulation of judicial procedure is dependent for its effectiveness upon the acquiescence of the courts would belie the historical facts. Equally vulnerable is the statement that the courts may regulate their procedure only by permission of legislatures. The orbits of legislative and judicial regulation of procedure are distinct and they must be determined primarily by historical criteria. Clearly the courts may disregard any legislative interference with what they have habitually regulated from earliest days. In that category are such matters as admission to the bar, disbarment, and the details of procedure of which the principal case is an illustration. Logically the legislature, then, should have the right to regulate those matters of procedure which it habitually regulated. But the doctrine of the separation of powers imposes restrictions upon this legislative right. The judiciary is an independent coördinate department. Consequently, the legislature would stray from its orbit were it to provide for anything which either abridged the general power of the courts to administer justice or which substantially hampered the court in its functions.<sup>20</sup> Regulation of the court's power over contempt would be an illustration of the former class. Legislative limitation of the time<sup>21</sup> given to counsel for argument may well be regarded as an illustration of the latter class.

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CONSTITUTIONALITY OF THE NEW YORK EMERGENCY HOUSING LAWS.—The general cessation of building operations during the recent war has inevitably resulted in an acute shortage of housing accommodations, especially in the larger cities.<sup>1</sup> In several foreign countries it has been found necessary to take legislative action to prevent profiteering landlords from taking advantage of this situation.<sup>2</sup> The first legislation of this kind in the United States was the Ball Rent Law,<sup>3</sup> regulating rents in the District of Columbia, which has recently been declared unconstitutional.<sup>4</sup> The most important housing legislation, however, has been that of the state of New York, which was enacted to avert a threatened

<sup>20</sup> *Dorsey v. Dorsey*, 37 Md. 64 (1872) (held that it was incompetent for the legislature to authorize the courts to reopen and rehear cases previously decided); *Burt v. Williams*, 24 Ark. 91 (1863) (granting of a continuance pending case was the exercise of judicial authority and a legislative act assuming to do this was void); *De Chastellux v. Fairchild*, 15 Pa. St. 18 (1850) (legislative enactment compelling courts to grant a new trial is null).

<sup>21</sup> *Cobb Chocolate Co. v. Knudson*, 207 Ill. 452, 69 N. E. 816 (1904); *Reagan v. St. Louis Transit Co.*, 180 Mo. 117, 79 S. W. 435 (1904). See THOMPSON, TRIALS, § 924.

<sup>1</sup> See Edward L. Schaub, "Regulation of Rentals during the War Period," 28 JOURN. POL. ECON. 1.

<sup>2</sup> Such action has been taken in England. See INCREASE OF RENT AND MORTGAGE INTEREST ACT, 5 & 6 GEO. V, c. 97, amended by 9 GEO. V, c. 7. In Newfoundland, see TENANTS' ACT of June 5, 1919, c. 10. And in New Zealand, see LANDLORD AND TENANT ACT, 10 GEO. V, No. 32, 104. As to similar statutes in continental Europe, see Edward L. Schaub, "Regulation of Rentals during the War Period," *supra*.

<sup>3</sup> See 41 STAT. AT L. 298.

<sup>4</sup> *Hirsch v. Block*, 267 Fed. (D. C.) 614 (1920). The decision went on the grounds that the statute deprived the landlords of property without due process of law, and that it took away the right to trial by jury. The chief justice dissented.